92-374

NO. _____

Supreme Court, U.S.
FILED
AUG 31 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

ROBERT J. STANDRING

PETITIONER, *PRO SE*

vs.

RALPH A. McALLISTER

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Robert J. Standring
757 Front Street
Berea, Ohio 44017
216 / 234-6118

QUESTION PRESENTED

Whether Respondent had statutory or common law immunity to violate Petitioner's civil rights to Due Process and Equal Protection of the Fourteenth Amendment to the United States Constitution by conducting an *ad hoc* (or secret) trial while acting under color of office?

TABLE OF CONTENTS

Petition for Writ of Certiorari to The United States Court of Appeals for the Sixth Circuit

Opinions Below 2

Jurisdiction 3

Constitutional And Statutory Provisions Involved .. 3

Statement Of The Case 4-7

Reasons For Granting The Writ 7-13

Conclusion 13-14

INDEX TO APPENDICES

		Page(s)
Appendix A	Opinion of the US Supreme Court reported in Scheuer v. Rhodes	**15-21**
Appendix B	Opinion of the District Court for the Sixth Circuit	**22-25**
Appendix C	Recommended Ruling of the U.S. Magistrate, adopted by the District Court for the Northern District	**26-35**
Appendix D	Petitioner's objection to the U.S. Magistrate's Report & Recommendation, which directly conflicts with the opinion presented by the Six Circuit.	**36-52**
Appendix E	Court of Appeals Denial of the Petition for Rehearing (issued Aug 13, 1992)	**53-54**
Appendix F	Amendment XIV to the United States Constitution	**55**
Appendix G	42 USC § 1983	**56**

PROOF OF SERVICE

Notarized	21 day of August 1992	**57-58**

TABLE OF AUTHORITIES CITED

Page(s)

CASES

Scheuer v. Rhodes, 416 US 232 . . . **2,8,11 14(FN),15-21,43**

Stump v. Sparkman, 425 US 349, 355-57 (1978) **2,6-7, 11-12,24,28-29**

STATUTES

United States Code

Title 28, Section 1254(1) **3**

Title 42 USC § 1983 . . **2,3-4,6,8-9,15, 20,22-23,26,28,31,56**

United States Constitution

Seventh Amendment . . **5 & (FN),38**

Eleventh Amendment . . . **3(FN),20**

Thirteeth Amendment . . . **5(FN)**

Fourteenth Amendment . **3,5,20,38-39,55**

OTHERS

Fed R. Civ. Proc. 11 . **22,24,32-34,47**

Fed R. Civ. Proc. 12B(6) . . **6, 26-28,39-40**

Fed R. Civ. Proc. 56(d) . . . **39-40**

ORC 2921.45(A) **24,38**

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RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner, Robert J. Standring, respectfully prays that a writ of certiorari issue to review sanctions and opinion of the United States Court of Appeals for the Sixth Circuit for refusing Petitioner the right to seek

redress for violation of 42 USC § 1983. Petitioner's cause of action is supported by Respondent's actions taken in clear absence of jurisdiction, under color of office, which violated Petitioner's constitutional and civil rights during *ad hoc*, secret trial proceedings.

OPINIONS BELOW

Previously, the US Supreme Court reported in Scheuer v. Rhodes (416 US 232) that similar actions are permissible, and that ruling appear in Appendix A. Respondent and the lower courts have relied upon the 1978 decision in Stump v. Sparkman, (425 US 349, 355-57) as a defense, and Petitioner has taken exception to their cited precedent based upon the lack of relevancy.

The unpublished written opinion of the Court of Appeals is reported as Standring v. McAllister, (Case number 92-3164, 6th Cir. 1992), and appears in Appendix B. The unpublished recommended ruling of the US Magistrate was adopted by the District Court,

and appears in Appendix C. This opinion was duly and timely challenged, and appears in Appendix D.

JURISDICTION

The Court of Appeals' opinion in this matter was filed on June 18, 1992. A timely Petition for Rehearing en banc, was filed on July 1, 1992. On August 13, 1992, the Court of Appeals denied petition, and appears in Appendix E. Having exhausted all lower court options, The Supreme Court's jurisdiction is invoked under Title 28, USC § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The Fourteeth Amendment to the United States Constitution is set forth in Appendix F and 42 USC § 1983, appears in Appendix G.[1]

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[1]During appellate process, Respondent has abandoned the issue of judicial immunity under the XI Amendment, and appears to be relying solely upon non-statutory doctrines.

STATEMENT OF THE CASE

Petitioner, Robert J. Standring, filed a complaint for redress in violation of 42 USC § 1983 against a Cuyahoga County Common Pleas Judge, Ralph A. McAllister, hereinafter referred to as Respondent.

On July 20, 1990, 33 days prior to the scheduled date of trial (August 23, 1990), Petitioner requested in writing that Respondent reassign Petitioner's case to any other trial judge who would allow a trial by jury. After Respondent refused Petitioner's request, Petitioner filed for a change of venue, which Respondent removed from court records to conceal Respondent's efforts to act outside his jurisdiction.

In the complaint, Petitioner expressly alleged that his Constitutional and Civil Rights were obviated during an *ad hoc* trial (styled *Xerox Corp. v. Standring*) in which Respondent openly engaged in partisanship behavior and unlawful conduct. Specifically, during the *ad hoc* proceedings, the Respondent

engaged in a series of *ex parte* meetings with the Plaintiff's attorney and witnesses, denied Petitioner the right of discovery, obviated all of Petitioner's subpoenas by secretly moving the trial date forward three days to August 20 without proper notice, deprived Petitioner the right to trial by jury, excluded material evidence to further the uttering of a forgery, coached Plaintiff's witnesses to give false and misleading testimony, falsified entries on the court's docket, and generally suspended Petitioner's Constitutional Rights under the Seventh[2] and Fourteenth Amendments.

When Petitioner protested the use of Plaintiff's forgery, Respondent began serving as *defacto* second-chair legal counsel for the Plaintiff (*Xerox*). The trial transcript tends to support the fact that Respondent was knowledgeable of the forgery.

Petitioner appealed Respondent's decision to

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[2]The Seventh Amendment is currently the subject of a state appeal styled *Xerox Corp v. Standring*, in which Petitioner demonstrates seven separate attempts to obtain a trial by jury. Respondent refused refused Petitioner's jury requests, citing the Thirteenth Amendment as the bases for his legal decision. Refernece here is merely to illustrate Respondent's repeated efforts to subvert the US Constitution.

the Eighth District Court, and while the *Xerox Corp v. Standring* case was on appeal, Petitioner brought a separate action under 42 USC § 1983 in US District Court for violation of Petitioner's civil and constitutional rights to a fair and impartial trial.

Petitioner's action against Respondent was dismissed under Fed. Rule 12B(6), even though the initial complaint clearly presented a *prima facie* case with a specific cause of action stated. Petitioner appealed to the Sixth Circuit Court of Appeals, and that court circumvented the facts and merits of the case by affirming the US Magistrate's Report and Recommendation. The court's opinion avoided the civil rights and constitutional issues raised, thereby granting Respondent *defacto* immunity.

Respondent's defense to Petitioner's complaint has been that even if the Respondent committed the acts as specifically alleged in the complaint, Respondent is entitled to absolute judicial immunity under the doctrine of common law. On appeal, the courts have primarily relied on Stump v. Sparkman (425 US 349,

355-57).

In reply to this *ad hoc arguendo*, Petitioner has repeatedly demonstrated that the Stump *Id*, decision does not apply. Whereas Judge Sparkman was acting *within* his lawful jurisdiction, Respondent was acting *in clear absence of all lawful jurisdiction*, thus giving rise to alternative precedents and applications of law.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for four reasons:

(1) This petition is of national importance as it relates to a Petitioner's constitutional rights of due process and equal protection, which the lower courts have failed in their duty to address.

Collectively, the lower courts had given implied consent to Respondent's unlawful conduct to suspend Petitioner's constitutional rights. As such, their opinion has established a precedent for sanctioning unlawful conduct under color of office, thus allowing adminis-

trative officials to obviate a Petitioner's constitutional rights in direct conflict with Scheuer v. Rhodes (416 US 232).

(2) This Petition presents the opportunity for the Supreme Court to establish guidelines and criteria for what type of judicial conduct constitutes the clear absence of jurisdiction in cases involving the violation of Civil Rights under 42 USC § 1983.

Respondent acted in clear absence of all lawful jurisdiction after being duly notified in writing to reassign Petitioner's case for just cause—videlicet, for refusal to grant Petitioner's repeated jury requests. Further, Petitioner reasons that Respondent was under an affirmative duty under the First Canon of Judicial Ethics not to become personally involved in Petitioner's case, and legal obligation to bring Petitioner's reassignment request to the attention of the senior administrative authority. Respondent's failure to act upon this reasonable request and affirmative legal obligation, created Respondent's absence of jurisdiction to proceed.

The Respondent, having ignored the formal written request, further acted *outside* his judicial forum to hear, decide and adjudicate the case when Respondent elected to become personally involved in Plaintiff's case by holding partisanship *ex parte* meetings to coach Plaintiff's witnesses and covering up Plaintiff's forgery.

Petitioner maintains that none of these acts, whether committed knowingly or intentionally, exist within Respondent's lawful jurisdiction, and that the lower courts have consistently refused to address or respond to this absence of jurisdiction issue.

(3) The opinions of the lower courts are in constitutional conflict with the spirit, purpose and intent of 42 USC § 1983 enacted by the US Congress to discourage corruption under color of office.

In this respect, Respondent has been allowed to distance himself from lawful jurisdiction with sanctioned court approval. When Respondent decided to recess the *ad hoc* proceedings, he removed his judicial robe and returned to the courtroom for the

express purpose of threatening Petitioner with the suspension of all Petitioner's Constitutional Rights. This event was witnessed and attested to by an individual who was present in the courtroom when the Respondent orally threatened Petitioner. According to the sworn Affidavit, Respondent, who was out of robe said:

> "Let me make one thing perfectly clear to you right here and now. I'm going to take those Constitutional and Civil Rights you've been counting on, roll them up and shove them up your ass and watch you choke on them."[3]

Upon reconvening the *ad hoc* trial proceedings, Respondent then proceeded to immediately implement his threats with deeds by suspending Petitioner's constitutional rights. Thus, Petitioner is able to establish the intent, as well as the deed, which eliminates and repudiates Respondent's claim to harmless errors.

Petitioner asserts that there is nothing in the US

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[3]A copy of the entire Affidavit appears on pages 50-52 in Appendix D, which was attached to Petitioner's objection to the US Magistrate's R&R and filed on 7/29/91.

Constitution, the Canon of Legal Ethics or incorporated within the embodiment of Respondent's oath of office that allows for, promotes or encourages this opprobrium of judicial conduct—except for the misapplication of the common law doctrine of judicial immunity.

(4) Both the Respondent and the Court of Appeals have proffered Stump v. Sparkman, *Id* as the controlling precedent, rather than use the guidelines established in Scheuer v. Rhodes *Id*. When we examine Stump *Id*, we see that this action involved the sterilization of a minor, and the trial judge was sued for violation of Civil Rights for his judicial decision to administratively authorize the minor's sterilization.

There is nothing to suggest, however, that the trial judge in the Stump v. Sparkman *Id* intentionally or inadvertently acted outside his jurisdiction. Judge Sparkman *did not* engage in *ex parte* meetings, *did not* obviate subpoenas, *did not* coach witnesses to give false testimony, and *did not* participate in covering up an uttered forgery. There is no evidence to

support or suggest that Judge Sparkman removed his judicial robe for the express purpose of threatening to suspend constitutional and civil rights prior to hearing or adjudicating that particular case.

There are vertically no similarities between Respondent's judicial machinations in Petitioner's action and those of the Stump *Id* case. The Stump v. Sparkman *Id* case was decided upon judicial actions that were taken *inside* the realm of a proper judicial forum.

Petitioner's case, on the other hand, focuses exclusively upon those actions taken by Respondent that were taken *outside* a proper judicial forum and *in clear absence of lawful jurisdiction*. Petitioner's case has nothing to do with the lawful decisions made under proper judicial forum, but rather Respondent's unlawful conduct and actions that were taken to deprive this Petitioner of constitutional and civil rights while acting under the color of Respondent's elected office.

CONCLUSION

With affirmation by the lower courts of Respondent's actions while conducting a judicial forum, which establishes legal precedent, we now have a judicial process that allows *defacto* immunity for reprehensible conduct under color of office.

If the US Supreme Court overturns the lower court's decision that allows for *ad hoc* or secret trials, then the Respondent is not entitled to common law judicial immunity.

If Respondent is not entitled to judicial immunity, then the opinions of the lower court must be reversed or set aside, and the case remanded back to the court of original jurisdiction with appropriate instructions so that Petitioner's discovery process may continue.

WHEREAS *the foregoing issues and federal question of law have not been addressed by the lower court*, and,

WHEREAS the lower courts appear to be in direct conflict with the Fourteenth Amendment, as well

as for those reasons set forth in this petition, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter, along with appropriate guidelines.[4]

Dated: August 24, 1992.

Respectfully Submitted,

Robert J. Standring
Petitioner, *Pro Se*

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[4] If the US Supreme Court elects not to address the issues presented in this writ at the present time, it is requested that a writ be issued that remands this matter to the Court of Appeals for redetermination in light of the US Supreme Court's opinion in Scheuer v. Rhodes, (416 US 232).

APPENDIX A

[416 US 232]

SHARAH SCHEUER, Administratrix, Etc, Petitioner,

v

JAMES RHODES et al. (No. 72—914)

ARTHUR KRAUSE, Administrator of the Estate of Allison Krause, et al., Petitioners,

v

JAMES RHODES et al. (No. 72—1318)

416 US 232, 40 L Ed 2d 90, 94 S Ct 1683

[Nos. 72—914 and 72—1318]

Argued December 4, 1973. Decided April 17, 1974.

SUMMARY

The plaintiffs, as personal representatives of the estates of students who were killed on the campus of Kent State University, filed in the United States District Court for the Northern District of Ohio actions to recover damages under 42 USCS § 1983 against the Governor of Ohio, the Adjutant General and his assistant, various named and unnamed officers and enlisted members of the Ohio National Guard and the President

of Kent State University. The complaints alleged in essence that the defendants intentionally, recklessly, wilfully and wantonly caused an unnecessary deployment of the Guard on the Kent State campus and, in the same manner, ordered the Guard members to perform illegal actions which resulted in the death of plaintiffs' decedents; the complaints also alleged that the action was taken under color of State law and deprived the decedents of their lives and rights without due process of law. The complaints were dismissed by the District Court for lack of jurisdiction without the filing of an answer to any of the complaints. The District Court held that the defendants were being sued in their official capacities and that the actions were therefore in effect against the State of Ohio and hence not maintainable under the Eleventh Amendment. The Court of Appeals for the Sixth Circuit affirmed, agreeing that the suit was in legal effect one against the State of Ohio and, alternatively, that the common-law doctrine of executive immunity barred the actions (471 F2d 430).

Briefs of Counsel, p 835, infra.

On certiorari, the United States Supreme Court reversed the judgment of the Court of Appeals and remanded for further proceedings, either by way of summary judgment or by trial on the merits. In an opinion by Burger, Ch. J., expressing the unanimous view of the Court, it was held that (1) the plaintiffs' claims, as stated in the complaints, were not barred by the Eleventh Amendment and that, consequently, the District Court erred in dismissing the complaints for lack of jurisdiction and (2) that common-law immunity of the defendants for their acts is not absolute but a qualified immunity of varying scope, the variation dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability was predicated.

Douglas, J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Annotated

Civil Rights § 12.5 — construction of complaint

2. Complaints which, in essence, allege that the

defendant state officials "intentionally, recklessly, wilfully and wantonly" caused an unnecessary deployment of the Ohio National Guard on the Kent State campus and, in the same manner, ordered the Guard members to perform allegedly illegal actions resulting in the death of plaintiffs decedents, and which further allege that the action was taken "under color of state law: and deprived the decedents of their lives and rights without due process of law, allege, fairly read, that each of the named defendants, in undertaking such actions, acted either outside the scope of his respective office or, if within the scope, acted in an arbitrary manner, grossly abusing the lawful powers of office.

Appeal and Error § 1257 — sufficiency of complaint

3. When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims; this is so even though it may appear on the face of the pleadings that a recovery is very remote and unlikely,

but that is not the test.

Pleading § 104 — dismissal — construction of complaint

4. In passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader.

Pleading § 103 — dismissal of complaint

5. A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

States § 95 — immunity from suit — liability of state officers — deprivation of federal rights

9. The District Court errs in dismissing, for lack of jurisdiction, plaintiffs' complaints, to which no answer has been filed and which allege facts demonstrating that they are seeking to impose individual and personal liability on the defendant state officials for what plain-

tiffs claim was a deprivation of federal rights by these officials under the color of state law, since whatever the plaintiffs may or may not be able to establish as to the merits of their allegations, their claims, given the favorable reading required by the Federal Rules of Civil Procedures, are not barred by the Eleventh Amendment.

Civil Rights § 12.5; States § 26 — executive immunity — civil rights statutes

14. Through the civil rights statutes, Congress intended to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a state and represent it in some capacity, whether they act in accordance with their authority or misuse it.

Civil Rights § 12.5; States § 26 — executive immunity — violation of civil rights

15. Government officials, as a class, cannot be totally exempt, by virtue of some absolute immunity, from liability under the terms of 42 USCS § 1983, providing

for a civil action for violation of federal rights, since the statute includes within its scope the misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.

APPENDIX B

No. 92-3164

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT J. STANDRING, Plaintiff-Appellant, v. RALPH A. MCALLISTER, Defendant-Appellee	**FILED JUN 18 1992** O R D E R LEONDARD GREEN, Clerk NOT RECOMMENDED FOR FULL-TEXT PUBLICATION Sixth Circuit Rule 24 limits citation to Ito specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This is to be prominently displayed if this decision is reproduced.

BEFORE: KEITH and RYAN, Circuit Judge, and KRUPANSKY, Senior Circuit Judge.

Robert Standring appeals the district court's judgment dismissing his case and granting the defendant's motion for Fed. R. Civ. P. 11 sanctions in this 42

U.S.C. § 1983 private civil rights case. Upon examination of the record and briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Standring filed a complaint against a Cuyahoga County Common Please Judge, Ralph McAllister. Standring alleged that his constitutional rights were violated during a civil action styled *Xerox Corp v. Standring*, Case No. 186651, filed in the Cuyahoga Court of Common Pleas. Judge McAllister presided over that civil action in which Standring was the defendant. Specifically, Standring alleged that during the course of proceedings in the *Xerox* case, Judge McAllister denied various discovery motions, secretly advanced the trial date without giving written notice and timely journal entry, deprived Standring of the right to trial by jury, excluded material evidence during the trial and also made prejudicial remarks, coached witnesses to give false testimony, conspired with defense counsel, made false entries upon the court's docket, and excluded expert testimony. Standring also alleged

that Judge McAllister violated Ohio Rev. Code §2921.45(A). He requested $250,000 in damages, plus costs and a public apology.

Upon review of the magistrate judge's report and recommendation, the district court granted the defendant's motion to dismiss, and granted sanctions against Standring. See Fed. R. Civ. P. 11; Fed. R. Civ. P. 33; *Stump v. Sparkman*, 435 U.S. 349, 355-57 (1978).

On appeal, Standring argues that the district court failed to consider his constitutional claims and the underlying facts.

As an initial matter, Standring did not challenge the award of sanctions against him on appeal.[5] This claim is thus considered abandoned and not reviewable. See *McMurphy v. City of Flushing*, 802 F.2d 191, 198-99 (6th Cir. 1986).

Upon consideration, we affirm the district court's judgment for the reasons stated in the magistrate

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5 This statement is false. Petitioner not only challenged *sanctions*, but in fact challenged them four times. It appears as if the Court of Appeals totally failed to read Petitioner's comprehensive objections to the US Magistrate's R&R, or if read, failed to take those objections under consideration.

judge's July 22, 1991, Report and Recommendation as adopted by the district court. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

(Signed by the Clerk Green)
Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. STANDRING,	)	CASE NO. 1:91CV0381
	)	
Plaintiff,	)	JUDGE ALICE
	)	BATCHELDER
v.	)	
	)	– MAGISTRATE
RALPH McALLISTER,	)	JUDGE J.W.
	)	BARTUNEK
Defendant.	)	
	)	REPORT AND
	)	RECOMMENDATION

This action is before the court upon the plaintiff's complaint seeking damages pursuant to 42 U.S.C. §1983. The matter comes before the magistrate judge upon the motion of defendant to dismiss plaintiff's complaint for the reason that it fails to state a claim upon which relief can be granted, pursuant to Fed.R.Civ.P. 12(b)(6).

I.

In 1990 defendant, a Cuyahoga County Common Please Court Judge, presided over a tort case in

which plaintiff was a party. Plaintiff contends that defendant through the denial of all of his motions, the failure to notify plaintiff of a change in the trial date, the denial of a jury trial, and the falsifying of the court's journal entry violated his right to due process.[6] As a result of the judge's action, plaintiff claims that he was financially and emotionally injured. Plaintiff seeks $250,000 in damages plus costs and a public apology.

II.

In his motion, defendant asserts that the complaint should be dismissed pursuant to Rule 12(b)(6) because defendant, as a judge, has absolute immunity from civil liability.

> Every defense, in law or in fact, to a claim for releif in any pleading . . . shall be asserted in the responsivle pleading thereto if one is required, except that the following

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6 This synopsis of the case by the US Magistrate grossly understates Petitioner's case and cause of original action, and especially the defendant's actions taken *outside* defendant's judicial forum, such as secretly moving the case forward to obviate seven subpeonas, covering up a forgery, coaching Xerox witnesses to give false testimony, suspension of all Constitutional Rights and threatening the petitioner.

> defenses may at the option of the pleader be made by motion . . . (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted.

Fed.R.Civ.P. 12(b)(6). To be successful, the defense must appear valid on the face of the complaint. Basile v. Merrill Lynch, Pierce, Fenner & Smith Inc., 551 F. Supp. 580, 591 (S.D. Ohio 1982); McNally v. American States Insurance Co., 382 F.2d 748 (6th Cir. 1967).

It is well settled that in order to safeguard principle and independent decision-making, a judge may not be held to answer in civil damages for those judicial acts committed in the exercise of his jurisdiction.[7] See, Stump v. Sparkman, 435 U.S. 349 (1978); Pierson v. Ray, 386 U.S. 547 (1967). The doctrine of judicial immunity is applicable in suits under 42 U.S.C. §1983. Pierson, 386 U.S. at 554-555 (1967). Furthermore, a judge will not forfeit the immunity because the action he took was in error, done maliciously or in excess of his authority. Stump, 435 U.S. at 356; Campbell v. Patterson, 724 F.2d 41, 43 (6th Cir. 1983). Only when a

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[7] The US Magistrate errs. This is not the issue at bar, but rather those acts and decisions taken outside the realm of lawful jurisdiction.

judge has acted in the "clear absence of all jurisdiction" will he be subject to liability. Stump, 435 U.S. at 357.

Plaintiff makes no allegations in his complaint that defendant acted in a clear absence of all jurisdiction. Rather all of plaintiff's assertions involve actions of the defendant which pertained to and occurred during plaintiff's trial, which was properly before the defendant.[8] Although plaintiff argues that defendant is not shielded by absolute immunity, he fails to support his theory with any case law. The law specifically states that ~~a~~ judge is immune from civil liability unless he is acting in clear absence of all jurisdiction. Id. Since the complaint does not even allege the absence of jurisdiction, defendant is immune from any civil liability. Thus, plaintiff has failed to state a claim upon which relief can be granted.

Therefore, it is the recommendation of the magistrate judge that the motion of defendant to dismiss be

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8 This is not a true statement. Plaintiff-Petitioner challenged Defendant-Respondent's jurisdiction for cause more than 30 days before the scheduled date of trial.

GRANTED.

Respectfully submitted,

Signed

JOSEPH W. BARTUNEK
United States Magistrate Judge

DATED: July 19, 1991

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of receipt of this notice.[9] Failure to file objections waives a party's right to further appellate review in regard to the matters addressed in the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 471 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

[9] Notice of Appeal was properly filed within the statutory guidelines.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. STANDRING,	)	CASE NO. 1:91CV0381
	)	
Plaintiff,	)	JUDGE ALICE
	)	BATCHELDER
v.	)	
	)	MAGISTRATE
RALPH McALLISTER,	)	JUDGE J.W.
	)	BARTUNEK
Defendant.	)	
	)	REPORT AND
	)	RECOMMENDATION

This action is before the court upon the plaintiff's complaint seeking damages pursuant to 42 U.S.C. §1983. The matter comes before the court upon defendant's motion s for sanctions pursuant to Fed.R.Civ.P. 11 with respect to plaintiff's interrogatories.

During March 1991 three persons, none of who are parties in this action, were served with interrogatories propounded by plaintiff. In response, Defendant filed two motions to strike the interrogatories and for sanctions. It is the previous recommendation of the

magistrate judge that the motions to strike should be denied for reason they were moot. Therefore, the magistrate judge will only address the issue of Rule 11.

I.

Rule 11 states in pertinent part:

> Every pleading, motion, and other paper of as party represented by an attorney shall be signed by a least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law. . . and that it is not interposed for any imporper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a

reasonable attorney's free.

(emphasis added).

In his motions for sanctions, defendant claims that the interrogatories are in clear violation of Fed.R.Civ.P. 33.

II.

Indetermining whether there has been a violation of Rule 11, a court must use an objective standard of reasonableness under the circumstances. Davis v. Crush, 862 F.2d 84, 88 (6th Cir. 1988). The fact that plaintiff brought this action as a pro se litigant will be taken into account. Fed.R.Civ.P. 11 advisory committee notes of 1983; Haines v. Kerner, 404 U.S. 519, 520 (1972).

The record shows that the only parties in this action are the plaintiff and the defendant. Rule 33(a) states, "[a]ny party may serve upon any other party written interrogatories to be answered by the party served. . . ." Not only does the language of the rule specifically state that interrogatories are to be served only on parties in the action, but so does the case

law.[10] Andrulonis v. United States, 96 F.R.D. 43, 45 (N.D.N.Y. 1982).

After a review of the interrogatories and the law, it is clear that the interrogatories were served upon the three individuals in violation of Rule 33. Although pro se plaintiff's are not held to as stringent standards as a lawyer, they still have a responsibility under Rule 11 to inquire into whether their pleading, motion, or other paper is well groundeded in fact and is warranted by existing law. Since the plain language of the rule informs any reader that only parties in an action can be served interrogatories, plaintiff knew or should have known at the time he signed the papers that the interrogatores were not warranted by existing law. Thus, plaintiff violated Rule 11.

Therefore, it is the recommendation of the magistrate judge that defendant's motion for Rule 11 sanctions be granted and it is further recommended that

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10 Although it is not mentioned or referenced in the R&R, Petitioner did attempt to injoin these parties as third-party defendants for their torte liability and duplicity in furthering the uttering of a forgery. The US Magistrate, however, made no inquiries into such matters.

defendant be redered to file an accounting of costs, including attorney's fee, which were incurred as a result of these two motions within 60 days whereupon the magistrate judge will determine the appropriate sanctions.

Respectfully submitted,

Signed

JOSEPH W. BARTUNEK
United States Magistrate Judge

DATED: July 19, 1991

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of receipt of this notice.[11] Failure to file objections waives a party's right to further appellate review in regard to the matters addressed in the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 471 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

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[11] Notice of Appeal was properly filed within the statutory guidelines.

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ROBERT J. STANDRING	No. 1:91-CV-0381
Plaintiff,	Judge Alice M. Batchelder
vs.	Assigned to U.S. Magistrate
RALPH A. McALLISTER,	Judge Joseph W. Bartunek
Defendant	**OBJECTION TO THE U.S. MAGISTRATE'S REPORT & RECOMMENDATION With SUPPORTING BRIEF**

Plaintiff, Robert J. Standring, having received the U.S. Magistrate's Report & Recommendation (hereinafter referred to as R&R) on July 23, 1991, now raises his timely objections to said R&R to grant defendant's motion to dismiss plaintiff's action with sanctions.

Plaintiff's objections are based upon the following issues of law as well as the substantive issues outlined in plaintiff's accompanying Brief and Exhibit.

Respectfully submitted,

Signed

ROBERT J. STANDRING
Plaintiff (pro se)
757 Front Street
Berea, Ohio 44017-1608
216 / 234-6118 (office)

BRIEF IN SUPPORT OF PLAINTIFF'S OBJECTIONS:

Objection I: R&R inaccurately summarizes Plaintiff's case.

Synopsis or summary of plaintiff's case should be amended to read:

> "Plaintiff has brought a tort action under the Ohio Revised Code 2921.45 against the defendant (a Cuyahoga County Common Pleas Court Judge) for defendant's civil and criminal violation of plaintiff's Civil and Constitutional Rights under the Bill of Rights provisions covered in Articles V, VI, VII and XIV. Plaintiff alleges that defendant a) conducted a secret trial without benefit of jury, b) obviated all lawful subpoenas, c) interfered with witnesses testimony, d) participated in covering up the uttering of a forgery used against the plaintiff, e) denied plaintiff the right to discovery in all forms, and f) tampered with or caused false information to be entered on defendant's official Court Docket. Plaintiff seeks redress of damages for these acts, further alleging that plaintiff's Civil and Constitutional Rights to a fair trial were both civilly and criminally violated."

Plaintiff believes that by portraying plaintiff's case in the R&R in superficial terms, and by omission, glossing over the importance to the right of discovery,

as well as the magnitude of the Civil and Constitutional Rights issues involved, could result in a prejudicial ruling and/or a decision contrary to law.

Since the Hickman v. Taylor, et al, 329 U.S. 495, 67 S. Ct. 385-397 (1947) case, it is a well established point of law that a party to an action is entitle to discovery in all forms. Therefore, for the defendant to deny discovery in all forms, and for the R&R to ignore this paramount issue, the R&R is materially defective.

In turn, this raises the issue of violating plaintiff's Constitutional Rights protected under the Due Process clause as provided for under Amendments V and XIV of the U.S. Constitution.

Objection II: The case has not been fully adjudicated on motion.

The R&R's referencing of Fed. Rule 12(b)(6) as the basis for recommending that defendant's motion to dismiss be granted, fails to properly address Fed. Rule 56(d), which is referenced and incorporated by Fed. Rule 12(b)(6) as a point of law.

Defendant's alleged criminal conduct was never denied, and plaintiff's supporting exhibits were never challenged. Therefore, as a matter of law, the Court must proceed on the basis that the allegations are true.

In the absence of denying or challenging plaintiff's allegations and/or exhibits, defendant pleaded absolute judicial immunity as an affirmative defense. Such a defense under the Eleventh Amendment, shifts the burden of proof to the defendant. Because the defendant has failed in this regard, the case has not been properly or fully adjudicated on motion urder Fed. Rule 56(d), and therefore, as a matter of law, the R&R must be overruled.

Objection III: <u>Improper linkage by reference</u>.

The R&R has linked by reference the "absolute immunity" issue to Fed Rule 12(b)(6). In so doing, the R&R shift or transfers the validity of the complaint to the defense, which implies that the burden of proof has been magically transferred back to plaintiff's Civil Rights cause of action.

Plaintiff objects to this improper linkage by reference, and in support of plaintiff's objection, plaintiff cites:

> "Actions brought under the civil rights laws against a public official whose position might entitle him to immunity if he acted in good faith, a plaintiff is not required to allege that the official has acted in bad faith in order to state a claim for relief: rather, since the call for immunity is a defense, the burden of pleading it rests with the defendant, and it is for him to claim that his conduct was justified by an objectively reasonable belief that it was lawful." (See Gomez v. Toledo, 446, US 635, 64 L. Ed 2d 572, 100 S Ct 1920).

Also, Harlow v. Fitzgerald, 457 US 800, 73 L. Ed 2d 396, 102 S Ct 2727, supports this ruling in reference to a defendant who commits wrongful acts within the scope of his discretionary authority.

Defendant's affirmative defense fails to meet the objectively reasonable measure of belief. As a matter of law, an affirmative defense claiming "absolute immunity" required that the individual hold diplomatic status or be serving as a member of Congress in some

lawful function or duty, and in this regard the defense has failed to demonstrate such status.

Objection IV: Cases selectively cited in the R&R do not apply to this action.

The R&R has arbitrarily decided that the defendant's criminal conduct was inside the boundaries of judicial discretion. However, this is a mixed question of law and fact, and so far, all evidentiary issues of fact clearly point in favor of the plaintiff.

The R&R selectively addresses the judicial immunity issue by citing cases where immunity was granted to defendants acting within (not outside) the scope of judicial discretion. None of the cited cases pertain to judicial immunity involving unauthorized and/or criminal conduct.

A balanced R&R should have cited the U.S. Supreme Court Case (Ex parte Young, 209 US 123, 52 l. Ed 714, 28 S Ct 441). Here, the U.S. Supreme Court held that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had

deprived another of a federal right under the color of state law.

> "When a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official character and is subjected in his person to the consequences of his individual conduct. The state has no power to impart to him any immunity from responsibility to the supreme authority of the United States." – (See Scheuer v. Rhodes, 416 US 232, 40 L. Ed 2d 90, 94 S Ct 1683, 71 Ohio Ops 2d 474).

Objection V: **R&R fails to address principles and safeguards expressed or implied under the U.S. Constitution.**

The R&R applies rationale that presupposes defendant's "*judicial acts* (were) *committed in the exercise of his jurisdiction*" when in fact, the defendant's acts were clearly criminal in nature, and thus, fell outside the realm of his ministerial, statutory and administrative authority, as well as defendant's sworn oath of office and affirmative obligation to uphold and preserve the U.S. Constitution.

By ignoring defendant's obligations commensurate with defendant's sworn oath of office, the R&R appears to be promoting or condoning the defendant's acts of judicial tyranny and machinations, which if allowed to stand without vigorous objection would be contrary to law and repugnant to the spirit of justice.

Defendant's shocking judicial conduct clearly lies outside the defendant's lawful jurisdiction. For the R&R to totally ignore such conduct, it is in clear violation of all substantive U.S. Constitutional and Civil Rights safeguards, which was the foundation for bringing plaintiff's initial action.

Objection VI: R&R incorrectly states an erroneous assertion attributed to plaintiff.

The R&R incorrectly states that ". . . *plaintiff's assertions involve actions of the defendant which pertained to and occurred during plaintiff's trial, which was properly before the defendant.*"

To the contrary—nothing before the defendant was proper! The obviating of subpoenas was not proper, secretly moving the trial forward was not

proper, repeatedly interfering with witness testimony was not proper, and the tampering with or causing false information to be entered on the official Court Docket was not proper.

All of these acts committed by the defendant occurred behind closed doors and in partisanship with opposing council, and committed without the prior knowledge and/or consent of the plaintiff.

First case in point: The plaintiff only discovered defendant's tampering with the Court Docket several months after the fact, where it was brought to plaintiff's attention by a Clerk of Court employee.

Second case in point: According to a sworn affidavit, the defendant was neither holding court nor in judicial robe when he threaten the plaintiff with suspension of his Constitutional Rights. (See previously filed Plaintiff's Exhibit "D" attached. Although this Exhibit speaks for itself, it is further corroborated by the defendant in a certified transcript.)

Objection VII: R&R incorrectly states that plaintiff has not stated a cause of action.

The R&R incorrectly states that "*Since the complaint does not even allege the absence of jurisdiction, defendant is immune from any civil liability.*"

Under the bold heading of "**Cause of Action**" plaintiff's petition for redress begins the opening paragraph and first sentence with "*Plaintiff avers that the above defendant knowingly, willfully and flagrantly committed a breach of Civil Rights against the plaintiff, resulting in . . .*" Plaintiff ends this first paragraph with, "*Plaintiff further maintains that defendant's actions collectively and individually violated plaintiff's Civil Rights by excessively exceeding the scope of judicial authority.*" (Emphasis and italics added).

What ambiguity appears here? Does not the words "excessively exceeding the scope of judicial authority" mean the same as or imply the absence of all jurisdiction? Plaintiff believes that the R&R is 'reaching' in its efforts to overlook the obvious and attribute some esoteric definition to this terminology.

Objection VIII: Objection to U.S. Magistrate entertaining sanction against the

plaintiff under Rule 11 for violation of Rule 33.

Plaintiff's objection to imposing Rule 11 sanctions is threefold. First, the defense council has not shown or demonstrated that he lawfully represented the three individuals who were served interrogatories in error while plaintiff was attempting to implement to discovery process.

Second, plaintiff believes that defense's action were undertaken or exercised on a *pro bono* or *quid pro quo* arrangement, and therefore, gratuitous in nature to shield or help conceal additional damaging evidence.

Third, each of the individuals served with interrogatories, albeit in error, directly participated in assisting the defendant with covering up an uttered forgery, obviating of subpoenas and jointly participated with the defendant in violating plaintiff's Constitutional and Civil Rights. Had it not been for their willing participation and direct personal involvement, these parties would not have been served interrogatories in the first place.

Thus, imposing sanctions prior to trial for the benefit of defense's gratuitous acts should not apply unless the defendant is able to prevail at trial before an impaneled jury.

THEREFORE, individually and collectively, the plaintiff requests that Judicial Notice be taken of these objections to preserve plaintiff's right to appellate review. And also, for each of the reasons stated herein, that the U.S. Magistrate's Report and Recommendations be set aside.

FURTHERMORE, plaintiff requests that he be allowed to proceed forthwith in obtaining normal discovery, which includes his Request for Admissions, Request for the Production of Documents and the taking of Depositions, all of which have been previously requested and duly served upon the defendant.

Respectfully submitted,
Signed

ROBERT J. STANDRING
Plaintiff (pro se)
757 Front Street
Berea, Ohio 44017-1608
216 / 234-6118 (office)

Exhibit Attachments:

Plaintiff has attached a signed and sworn affidavit to these objections, which is incorporated herein as Exhibit "D" and made part of these written objections to the U.S. Magistrate's Record & Recommendation.

Certificate of Service:

Plaintiff avers that he has filed his objection to the U.S. Magistrate's Report and Recommendation with the Clerk of Court within ten days to preserve plaintiff's right to further appellate review. Plaintiff further avers that he has served a copy of said objections upon the defendant's attorney via regular U.S. Mail, with postage fully prepaid, this 29th day of July 91.

Signed

ROBERT J. STANDRING

SWORN AFFIDAVIT

I, Lori Ann Sharkey, of 5221 Woodbury Hills Drive, Parma, OH 44134, do solemnly swear under oath that I was physically present in Courtroom 17D at the Cleveland Justice Center on August 20 and 21, 1990, between the hours of 9 AM and 3:30 PM, while Judge McAllister was conducting a trial.

I further aver that over the lunch hour on August 20, 1990, while the court was in recess, Judge McAllister, re-entered the courtroom at about 12:15 PM, out of judicial robe and immediately approached Mister Standring's table. First, the judge conducted a physical search of my personal belongings, and upon discovering that I was not secretly recording testimony, Judge McAllister then proceeded to threaten Mister Standring by saying the following:

> "Let me make one thing perfectly clear to you right here and now. I'm going to take those Constitutional and Civil Rights you've been counting on, roll them up and shove them up your ass and watch you choke on them."

After Judge McAllister's departure from the courtroom, I made the following inquiry, "I think you got the judge mad at you. Was it because you asked for a jury trial?" At this time, no one else was present in the room.

It should also be noted that I did not participate in the trial for either side, and was only in attendance as a spectator to the two-day event. A jury was quickly impaneled for a short time after Mister Standring requested judicial notice be taken on the second day. Then after being recessed for lunch on the second day, the jury never returned to the courtroom. The jury never rendered or delivered a verdict in my presence, nor did I witness a jury being discharged at the end of the trial. This concludes my statement of fact.

THE FORGOING AFFIDAVIT has been given of my own free will, and to the very best of my recall, it is averred to be true and complete, without any material fact eliminated or distorted. This Affidavit was made without remuneration and without promise of remuneration, or any other promise of services, compensa-

tion or reward of any kind, and I have affixed my signature this 9 day of May, 1991 to that effect.

Signature of Lori A. Sharkey

LORI A. SHARKEY

(NOTARY'S SEAL)

Witnessed and sworn to in my presence this 9 day of May 1991, to which I have affixed my hand and seal.

Signature of Kathleen L. Burkett

KATHLEEN L. BURKETT

NOTARY PUBLIC, STATE OF OHIO

MY COMMISSION EXPIRES FEB. 18, 1993

APPENDIX E

No. 92-3164

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT J. STANDRING, Plaintiff-Appellant, v. RALPH A. MCALLISTER, Defendant-Appellee	**FILED** **AUG 13 1992** LEONARD GREEN, Clerk **ORDER**

BEFORE: KEITH and RYAN, Circuit Judge, and KRUPANSKY, Senior Circuit Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

(Signed by the Clerk Green)
Leonard Green, Clerk

APPENDIX F

XIV Amendment to the U.S. Constitution

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX G

42 USC § 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

NO. _____

ROBERT J. STANDRING

PETITIONER, *PRO SE*

vs.

RALPH A. McALLISTER

RESPONDENT.

PROOF OF SERVICE

I, Robert J. Standring, do swear or declare that on or before this date, August 31, 1992, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached PETITION FOR A WRIT OF CERTIORARI on the party's counsel to the above proceeding and on every other person required to be served by depositing an envelope containing the above documents in the

United States mail, properly addressed to each of them with first-class postage prepared.

The names and addresses of those served are as follows:

Craig S. Cobb (0023232) &
Jill M. Gliha (0046724)
Janik, Lester & Dunn, LPAs
1111 Chester Avenue
400 Park Plaza Building
Cleveland, Ohio 44114

(SEAL)

Robert J. Standring

Robert J. Standring, Affiant

Subscribed and Sworn to Before Me
this 24th day of August, 1992.

Linda T. Oberacker

Notary Public in and for
Cuyahoga County, State of Ohio

LINDA T. OBERACKER, Notary Public
State of Ohio, Cuyahoga County
My commission expires Dec. 20, 1992

Supreme Court, U.S.
FILED
SEP 30 1992
OFFICE OF THE CLERK

No. 92-374

In The

Supreme Court of the United States

October Term, 1992

ROBERT J. STANDRING,

Petitioner,

vs.

RALPH A. MCALLISTER,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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BEST AVAILABLE COPY

QUESTIONS PRESENTED FOR REVIEW

Whether respondent, Judge Ralph A. McAllister, has absolute judicial immunity from suit brought pursuant to 42 U.S.C. § 1983 for acts committed within his official capacity and judicial jurisdiction.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Table of Contents ii

Table of Citations iii

Opinions Below 1

Statement of Jurisdiction 2

Constitutional Provision, Rule and Statute Involved 2

Summary of Argument 3

Statement of the Case 3

Reasons for Denying the Writ 5

I. Petitioner's writ of certiorari should be denied because it presents an issue already decided by the United States Supreme Court and Fails to Satisfy the Character of reasons the Court will consider for review under Supreme Court Rule 10. 5

II. Judge McAllister has absolute judicial immunity from liability for the claims asserted by petitioner under 42 U.S.C. § 1983. 7

III. Qualified Immunity under the Eleventh Amendment does not apply in this action. 11

Contents

Page

Conclusion 13

TABLE OF CITATIONS

Cases Cited:

Bradley v. Fisher, 13 Wall 335 (1872)..... 7

Campbell v. Patterson, 724 F.2d 41 (6th Cir. 1983) 8, 12

Dieu v. Norton, 411 F.2d 761 (7th Cir. 1969)..... 10

Eades v. Sterlinske, 810 F.2d 723 (7th Cir. 1987) 9

Flip v. Flanagan, 729 F. Supp. 1149 (N.D. Ohio 1989) 8, 12

Forrester v. White, 484 U.S. 219, 108 S. Ct. 538 (1988) 10

Pierson v. Ray, 386 U.S. 547 (1967).....7, 12

Rice v. Sioux City Memorial Park Cemetary, 349 U.S. 70 (1955) 5

Rolleston v. Eldridge, 848 F.2d 163 (11th Cir. 1988) 10

Scarso v. Cuyahoga County Dept. of Human Services, 747 F. Supp. 381 (N.D. Ohio 1989) 7

Scheuer v. Rhodes, 416 U.S. 232 (1974) 11, 12

Stump v. Sparkman, 425 U.S. 349 (1978) 3, 6, 8, 12

Contents

Page

Xerox Corporation v. Standring, Case No. 186651, (Cuyahoga County Court of Common Pleas) 3, 9, 11

Statutes Cited:

28 U.S.C. § 1254(1) 2

42 U.S.C. § 1983 .....i, 2, 7, 10, 12

United States Constitution Cited:

Eleventh Amendment 2, 8, 11

Rules Cited:

Supreme Court Rule 10 .....2, 5

Federal Rule of Civil Procedure 12(b)(6) 4

No. 92-374

In the

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October Term, 1992

ROBERT J. STANDRING,

Petitioner,

vs.

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Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

1. July 19, 1992 Report and Recommendation (Petitioner's Writ, App. C) (R28) *Standring v. McAllister*, Case No. 1:91 CV 381, U.S.D.C., N.D. Ohio, E.D., Magistrate Judge J. W. Bartunek.

2. January 31, 1992 Order Adopting Report and Recommendation (R39).

3. June 18, 1992 Order Affirming District Court's Judgment (Petitioner's Writ, App. B) *Standring v. McAllister*, Case No. 92-3164, United States Court of Appeals, Sixth Circuit, Judges Keith, Ryan and Krupansky.

STATEMENT OF JURISDICTION

Petitioner invokes jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION, RULE AND STATUTE INVOLVED

1. Supreme Court Rule 10.

2. 42 U.S.C. § 1983:

> Civil Action for Deprivation of Rights.
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any state or territory or district of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. For the purposes of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

3. United States Constitution, Eleventh Amendment:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

SUMMARY OF ARGUMENT

1. Petitioner's writ of certiorari should be denied because it requests the Court to restrict the doctrine of judicial immunity, forcing members of the judiciary to answer in court to any allegation of judicial misconduct made by an unhappy litigant.

2. Respondent is immune from liability under *Stump v. Sparkman*, 435 U.S. 349 (1978), because the alleged misconduct occurred while respondent had jurisdiction and was presiding over the *Xerox* action.

3. Under the doctrine of judicial immunity, respondent is not required to demonstrate that his conduct during the *Xerox* action was reasonable under the circumstances or that he acted in good faith.

STATEMENT OF THE CASE

This matter arises from a Complaint filed on March 1, 1991 in the United States District Court, Northern District of Ohio by petitioner Robert J. Standring ("petitioner") against respondent, the Honorable Ralph A. McAllister ("Judge McAllister"), a Cuyahoga County Common Pleas Judge (R1). The case was referred to Magistrate Judge Joseph W. Bartunek (R3). The Complaint alleges deprivation of petitioner's constitutional rights during a civil action styled *Xerox Corporation v. Standring*, Case No. 186651, Cuyahoga County Court of Common Pleas ("*Xerox* case") (R1). As set forth in the Complaint, Judge McAllister was the presiding judge over that civil action in which petitioner was the defendant (R1).

Petitioner alleges in his Complaint that during the course of proceedings in the *Xerox* case, Judge McAllister denied various discovery motions (R1, ¶ 2.2); secretly advanced the trial date

without benefit of written notice and timely journal entry (R1, ¶ 2.4); deprived him of the right to trial by jury (R1, ¶ 2.5); during the trial, improperly excluded material evidence, made prejudicial remarks, coached witnesses to give false testimony (R1, ¶ 2.6); conspired with defense counsel and made false entries upon the court's docket (R1, ¶ 2.7); and excluded expert testimony (R1, ¶ 3.4).

All the conduct complained of in petitioner's complaint occurred while Judge McAllister was acting as a judge and within the bounds of his jurisdiction. Consequently, on March 15, 1991, a motion to dismiss based upon the doctrine of judicial immunity was filed pursuant to Fed. R. Civ. P. 12(b)(6) (R4). Petitioner filed his Memorandum in Opposition to the Motion to Dismiss on March 22, 1991 (R6). Judge McAllister filed his Reply Memorandum Instanter in Support of Motion to Dismiss Complaint on March 26, 1991 (R9). Petition filed his Motion for Leave to File a Memorandum to Support Overruling Defendant's Motion to Dismiss on April 1, 1991 (R8).

On July 18, 1991 Magistrate Judge J.W. Bartunek filed his Report and Recommendation granting Judge McAllister's Motion to Dismiss based on judicial immunity (R28). Petitioner filed his objections to the Magistrate's Report and Recommendation on July 29, 1992 (R35). The District Court Judge conducted a *de novo* review of the record and adopted the Report and Recommendation on January 31, 1992, granting Judge McAllister's Motion to Dismiss (R39).

On February 11, 1992, petitioner filed his Notice of Appeal to the United States Court of Appeals for the Sixth Circuit (R40). The Sixth Circuit affirmed the District Court's Judgment dismissing petitioner's action on June 18, 1992 (Petitioner's Writ, App. B).

Petitioner filed a Petition for Rehearing En Banc on June 29,

1992, which was denied by the Sixth Circuit on August 13, 1992. The instant appeal followed.

REASONS FOR DENYING THE WRIT

I.

PETITIONER'S WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE IT PRESENTS AN ISSUE ALREADY DECIDED BY THE UNITED STATES SUPREME COURT AND FAILS TO SATISFY THE CHARACTER OF REASONS THE COURT WILL CONSIDER FOR REVIEW UNDER SUPREME COURT RULE 10.

The review of a petition for writ of certiorari is governed by Supreme Court Rule 10. A petition for writ of certiorari is granted only for special and important reasons. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74 (1955). Rule 10 provides that although not controlling or fully measuring the Court's discretion, the following indicate the character of reasons that will be considered by the Court:

> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way that

> court of last resort or of a United States court of appeals.
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Petitioner has failed to state any reason, under Rule 10 or otherwise, that would convince the Court to grant petitioner's writ. The question presented for review does not involve a special or important issue not previously decided by the Court. Moreover, it does not satisfy the character of reasons the Court will consider for review. There is no conflict between the Circuit Courts, between the federal and state courts or a question of federal law which conflicts with an applicable decision of the United States Supreme Court. The decision rendered by the District Court and affirmed by the Sixth Circuit directly supports and follows from this Court's decision in *Stump v. Sparkman*, 425 U.S. 349 (1978).

Petitioner argues that the Court should grant his writ because the instant action provides the Court with an opportunity to establish guidelines with respect to the type of judicial conduct that constitutes the clear absence of jurisdiction. The Court does not need such an opportunity. Guidelines regarding the application of judicial immunity were established in *Stump v. Sparkman*, 435 U.S. 349 (1978). It is clear from the *Stump* decision that if the conduct in question is the kind normally performed by a judge (*i.e.*, judicial acts), and the plaintiff was dealing with the judge in his judicial capacity, the doctrine of judicial immunity applies in a given action.

What petitioner is really asking the Court to do is to restrict the doctrine of judicial immunity. However, restricting absolute

judicial immunity is contrary to all established precedent and completely unnecessary. When a litigant believes that a presiding judge has committed error, the litigant may seek his remedy through appellate review, not by suing the presiding judge.

II.

JUDGE MCALLISTER HAS ABSOLUTE JUDICIAL IMMUNITY FROM LIABILITY FOR THE CLAIMS ASSERTED BY PETITIONER UNDER 42 U.S.C. § 1983.

It is a firmly established doctrine of law that a judge is absolutely immune from suit for acts committed within his or her official capacity and judicial jurisdiction. This long-standing legal principle, established at common law, was first recognized by the United States Supreme Court in *Bradley v. Fisher*, 13 Wall 335 (1872). As stated more recently by the Court in *Pierson v. Ray*, 386 U.S. 547, 554 (1967):

> It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation.

The Court further held that the doctrine of judicial immunity applies in suits premised on alleged civil rights violations under 42 U.S.C. § 1983, as in the instant action. *Pierson*, 386 U.S. at 356; *Scarso v. Cuyahoga County Dept. of Human Services*, 747 F. Supp. 381, 385 (N.D. Ohio 1989).

A judge is not deprived of immunity even if the actions he took were in error, were done maliciously or in excess of his authority. A judge is subject to liability *only* when he acts in the clear absence of all jurisdiction.[1] *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978); *Campbell v. Patterson*, 724 F.2d 41, 43 (6th Cir. 1983); *Flip v. Flanagan*, 729 F. Supp. 1149, 1152 (N.D. Ohio 1989).

Thus, any action allegedly taken by Judge McAllister with respect to discovery Motions, rescheduling of trial, procedural errors, exclusion of evidence or false entries upon the court's docket were done while he had jurisdiction over the subject matter of the action and he is immune from liability. The mere fact that Judge McAllister "returned to the courtroom out of robe" during a trial recess does not mean that Judge McAllister was acting without jurisdiction as petitioner implies at page 9 of his writ.

In *Stump v. Sparkman*, 435 U.S. 349, 355-57 (1978), the Supreme Court set forth a simple two-part test to determine whether judicial immunity applies in a given action:

1. Whether the general conduct in question is the kind normally performed by a judge (i.e., judicial acts); and

2. Whether the plaintiff was dealing with the judge in his judicial capacity.

---

1. Petitioner's statement in his writ at footnote one, that respondent previously relied on judicial immunity pursuant to the Eleventh Amendment as a defense to this action, misstates the facts. Respondent has never relied on a qualified immunity defense pursuant to the Eleventh Amendment. Respondent's defense is, and always has been, common law judicial immunity. Throughout this action, petitioner consistently confuses qualified immunity of state officials under the Eleventh Amendment with absolute judicial immunity.

Application of the *Stumps* test to the case at bar reveals that all the allegations contained in the Complaint are premised upon Judge McAllister's conduct pursuant to and occurring during the course of the *Xerox* case. In fact, no challenge or question is presented in the Complaint that Judge McAllister is a lawful, and duly elected judge of the Cuyahoga County Common Pleas Court and that he had jurisdiction over the matter on his docket. Further, there is no question that the petitioner dealt with Judge McAllister exclusively in a judicial capacity.

A review of petitioner's Complaint and Magistrate Bartunek's comments in his Report and Recommendation (R28) confirm petitioner's failure to state a claim:

> Plaintiff makes no allegation in his Complaint that defendant acted in a clear absence of all jurisdiction. Rather all plaintiff's assertions involve actions of the defendant which pertained to and occurred during plaintiff's trial, which was properly before the defendant. . . . Since the Complaint does not even allege the absence of jurisdiction, defendant is immune from any civil liability. Thus, plaintiff has failed to state a claim upon which relief can be granted.

Therefore, the doctrine of judicial immunity bars the instant action absent any allegaton by petitioner that Judge McAllister acted outside his jurisdiction. For example, in *Eades v. Sterlinske*, 810 F.2d 723 (7th Cir. 1987), the plaintiff alleged that a state court judge had violated her constitutional rights by fraudulently altering the trial transcript and docket sheet. The Seventh Circuit affirmed the district court's order of dismissal based upon absolute judicial immunity.

In *Rolleston v. Eldridge*, 848 F.2d 163 (11th Cir. 1988), a party sought to hold a state court judge liable under 42 U.S.C. § 1983, for allegedly ignoring state procedural rules by dismissing a claim without a hearing. Again, the appellate court affirmed the district court's dismissal of the Complaint based on the doctrine of judicial immunity.

Remarkably similar to the instant case, is *Dieu v. Norton*, 411 F.2d 761 (7th Cir. 1969), where the plaintiff sought to recover damages from a state court judge who allegedly violated the party's civil rights by conspiring with defense counsel and directing a verdict in the defendant's favor. The court found that the judge was protected by the doctrine of judicial immunity. As in the other authorities cited above, a dismissal of the Complaint for failure to state a claim which relief could be granted was affirmed by the Seventh Circuit Court of Appeals.

Finally, the Supreme Court in *Forrester v. White*, 484 U.S. 219, 108 S. Ct. 538, 544 (1988), in discussing the purposes served by judicial immunity from liability in damages, wrote:

> If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. . . . The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication. Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of

> review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability.

Thus, Judge McAllister is immune from any civil liability because of petitioner's failure to allege any set of facts demonstrating that Judge McAllister's conduct during the *Xerox* case occurred in the absence of jurisdiction.

Relief from adverse judgment in the *Xerox* case was available to petitioners by way of appellate review. As noted by petitioner in his writ at footnote two, he has availed himself to this remedy. The state appellate court is the proper and *only* channel through which petitioner may be entitled to relief, not the instant action.

III.

QUALIFIED IMMUNITY UNDER THE ELEVENTH AMENDMENT DOES NOT APPLY IN THIS ACTION.

Qualified Immunity for state officials under the Eleventh Amendment has nothing whatsoever to do with this action, and petitioner's reliance on *Scheuer v. Rhodes*, 416 U.S. 232 (1974) as controlling precedent is simply misplaced and wrong. *Scheuer* involved state officials (not judges) acting as officers of the state and the scope of the qualified immunity defense available to state executive officers with respect to their actions taken under color of state law. The defense of qualified immunity is distinct from the absolute judicial immunity defense asserted by Judge McAllister in the instant action. A qualified immunity is available to officers of the executive branch of government depending on the scope of discretion and responsibilities of the office, and the existence of reasonable grounds and a good faith belief for the acts performed in the course of official conduct. *Scheuer*, 416 U.S. at 247-48.

Judge McAllister does not have this burden in the case at bar. He is a member of the judiciary, not executive, branch of the government. As a member of the judiciary, he is not required to demonstrate the reasonableness of his actions or that he acted in good faith. Judge McAllister is entitled to absolute immunity even if the actions he took were in error, done maliciously or in excess of his authority, as long as he acted with jurisdiction over the subject matter before him. *Stump v. Sparkman*, 435 U.S. at 356-57; *Campbell v. Patterson*, 724 F.2d at 43; *Flip v. Flanagan*, 729 F. Supp. at 1152. Petitioner's own cited case law supports this contention.

In *Scheuer*, this Court discussed the scope of judicial immunity under 42 U.S.C. § 1983. *Citing Pierson v. Ray*, 386 U.S. 547 (1967) this Court stated that the legislative history of 42 U.S.C. § 1983 does not abolish wholesale all common law immunities and if Congress had intended to do so, it would have specifically abolished judicial immunity. *Scheuer* at 244. Thus, a judge has absolute immunity from liability under 42 U.S.C. § 1983 for acts committed within his judicial jurisdiction.

CONCLUSION

This case is a classic example of the application of judicial immunity. Petitioner's Complaint fails to allege any facts that demonstrate Judge McAllister acted in the clear absence of all jurisdiction. Therefore, the district court properly granted Judge McAllister's Motion to Dismiss.

Accordingly, Judge McAllister respectfully requests the Court to deny petitioner's writ for certiorari.

Respectfully submitted,

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Supreme Court, U.S.
FILED
OCT 13 1992
OFFICE OF THE CLERK

No. 92-374

In The

SUPREME COURT of the UNITED STATES

October Term 1992

ROBERT J. STANDRING

Petitioner, Pro Se

vs.

RALPH A. McALLISTER

Respondent.

REPLAY TO

RESPONDENT'S BRIEF IN OPPOSITION

Robert J. Standring
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BEST AVAILABLE COPY

QUESTION PRESENTED

Petition also reaffirms his original Question:

Whether Respondent had statutory or common law immunity to violate Petitioner's civil rights to Due Process and Equal Protection of the **Fourteenth Amendment** to the United States Constitution by conducting an *ad hoc* (or secret) trial while acting under color of office?

TABLE OF CONTENTS

Page

Question Presented i

Table Of Contents ii

Table of Citations iii

Table of Authorities Cited iii

Reply to Respondent's Brief In Opposition . 1

Constitutional & Statutory Provisions Involved . 2

Summary Of Argument 2

Corrections To Statement of Facts . . . 3

Reason For Granting Petition 4

I Judicial Conduct Is The Issue—Not Judicial Error. 4

II Respondent's Conduct Was Not "Within" Respondent's Jurisdiction. . . 5

III The Supreme Court's Two-Part Test Not Properly Applied. . . . 6

Conclusion 8

TABLE OF CITATIONS

	Page
Pierson v. Ray, 386 US 547 (1967)	5, 6
Scheuer v. Rhodes, 416 US 232 (1974)	3
Stump v. Sparkman, 425 US 349 (1978)	3

TABLE OF AUTHORITIES CITED

STATUTES

United States Code

42 USC § 1983 . . . 2, 5, 6, A1

United States Constitution

Fourteenth Amendment . . i, 2, A1

OTHERS

Supreme Court Rule 15.6 . . . 1

No. 92-374

In The
SUPREME COURT Of The UNITED STATES

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ROBERT J. STANDRING

Petitioner, Pro Se

vs.

RALPH A. McALLISTER

Respondent.

On Petition for Writ of Certiorari to the Untied States Court of Appeals for the Sixth Circuit.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

The Petitioner respectfully invokes Supreme Court Rule 15.6 to correct material and misleading statements found in "Respondent's Brief in Opposition."

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The **Fourteenth Amendment** to the US Constitution is set forth in Appendix A, and **42 USC § 1983** is set forth in Appendix B.

SUMMARY OF ARGUMENT

1. Petitioner's request for writ of certiorari should be granted because Respondent's (R1) misconduct under color of office violated Petitioner's civil rights to the *Due Process* and *Equal Protection* clause of the **Fourteenth Amendment**.

2. Respondent is *not* immune, because the *custom* clause in **42 USC § 1983** precludes immunity if the alleged misconduct occurred while Respondent acted in clear absence of jurisdiction to violate the statute.

3. Under the common law doctrine of absolute judicial immunity, Respondent's (R1) misconduct during and outside the proceedings of Case No. 186651 was *not normal* nor *reasonable conduct*. Furthermore, Respondent has misapplied the Supreme Court's two-part test in this action.

CORRECTIONS TO STATEMENT OF FACTS

In Respondent's version of Petitioner's case, Respondent failed to include Petitioner's challenge to Respondent's jurisdiction, which occurred on July 20, 1990—*33 days prior* to the official date of trial.

The reason why this is materially important is because Respondent raised the issue of jurisdiction. To omit such an important fact might lead the Court to erroneously conclude that Respondent's conduct was tacitly sanctioned or agreed to by Petitioner, when in fact it was instanter challenged for cause!

Because of this error by omission, Petitioner and Respondent substantially differ as to whether the alleged misconduct falls *within* Respondent's jurisdiction, or lies *outside* Respondent's jurisdiction.

Respondent contends that *Stump v. Sparkman* 435 US 349, 356-57 (1978) has established the precedent, while Petitioner contends that the Court's opinion in *Scheuer v Rhodes* 416 US 232 (1974) should be applied.[1]

---

[1] Respondent also cites obsolete case law that occurred prior to the enactment of more modern legislation.

If the Court is of the opinion that cited precedents are not applicable to the particular facts and circumstances of Petitioner's action, than new case precedent is warranted with appropriate guidelines for judicial conduct.

The Court's opinion of Petitioner's federal question will establish to what degree a trial judge *may* or *may not* become directly or personally involved in any litigation.

REASON FOR GRANTING PETITION

I.
Judicial Conduct is the Issue —Not Judicial Error.

Respondent argues for *absolute judicial immunity* and by linkage declares that "When a litigant believes that a presiding judge has committed error, the litigant may seek his remedy through appellate review, not by suing the presiding judge." (R1 p. 7)

In most cases that is a valid argument, but not with the case at bar. Petitioner's case deals with *judicial conduct*, not judicial errors.[2]

[2]The judicial errors involving Case No. 186651 were in fact appealed on seven separate assignments of error. To date, none of those errors have been remedied upon appeal.

Respondent has raised the collateral issue of judicial error, hoping to camouflage or confuse the main issue.

All the lower court opinions have failed to address the issue of the Respondent's conduct. The lower courts have never asked: Were the Respondent's acts those which are normally conducted or performed by a trial judge?

As a result, the tests established by the Supreme Court have never been applied, but rather tacitly avoided.

II.
Respondent's Conduct Was Not "Within" Respondent's Jurisdiction.

Respondent asserts that: "Judge McAllister has absolute judicial immunity from liability for the claims asserted by Petitioner under 42 USC § 1983." (R1 p. 7)

Based upon the *custom* clause, this is not true. The *Pierson v. Ray*, 386 US 547, 554 (1967) needs to be reexamined if it is projecting this conclusion, because the Court also emphasized that acts had to be *"within"* judicial jurisdiction. It is misleading for Respondent to insert a phrase like "*within his or her official capacity and judicial jurisdiction*" (R1 p. 7), when Respondent is fully aware that this case exclusively pertains to *conduct taken in the*

absence of proper judicial forum.[3]

III.
Supreme Court's Two-Part Test Not Properly Applied.

It is true, the Supreme Court has set forth guidelines in the form of a two-part test to determine whether judicial immunity applies in a given action: But Respondent has only applied *half the test* established by the Supreme Court.

---

[3]In his dissenting opinion in the *Pierson v. Ray*, id, Justice Douglas reminded the Court that:

> I do not think that all judges, under all circumstances, no matter how outrageous their conduct are immune from suit under . . . 42 USC § 1983. The Court's ruling is not justified by the admitted need for a vigorous and independent judiciary, is not commanded by the common-law doctrine of judicial immunity, and does not follow inexorably from our prior decisions. . . .
>
> The congressional purpose seems to me to be clear. A condition of lawlessness existed in certain of the States, under which people were being denied their civil rights. Congress intended to provide a remedy were not unaware that certain members of the judiciary were implicated in the state of affairs which the statute was intended to rectify. It was often noted that "[i]mmunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress.

If Justice Douglas' observations are correct, then it might be reasonable to conclude that we no longer have a *citizenry* of constitutional government, but rather *subjects* of judicial ternary.

Therefore, it is reaching to assume that absolute immunity should be granted, when only half the test is being applied.

The portion of the test *not applied* states:

> **Whether the *general conduct* in question is the kind *normally performed* by a judge.**

Herein lies the crux of the confusion. When the Respondent held *ex parte* meetings with opposing counsel—was that *normal conduct*? When Respondent coached witnesses to give false testimony—was that *normal conduct*? When Respondent obviated lawfully issued subpoenas—was that *normal conduct*? When Respondent ordered the Petitioner's case secretly moved forward three days—was that *normal conduct*? When Respondent covered up the uttering of a forgery—was that *normal conduct*? When Respondent served as second-chair legal counsel for Xerox—was that *normal conduct*? And finally, when Respondent conducted a physical search without warrant and then proceeded to suspend Petitioner's Constitutional Rights—was that *normal conduct*?[4]

---

[4] Again, the Court should look at the total general conduct to determine whether this is merely a matter of judicial error or does this constitute a pattern of judicial misconduct. Perhaps the proper legal remedy lies within a Class Action Suit.

If this two-part test is to be applied, then the Court will have to decide what constitutes *normal conduct*.

CONCLUSION

Respondent's conduct outlined in this case not only shocks the conscience, it brings shame upon the ministry of law. And now Respondent seeks the Court's absolution for his shameful misconduct without penance.

Respondent, himself, was the instrument of his own doing when he implemented a hidden agenda, which was clearly perpetrated for the express purpose of depriving Petitioner of equal access and due process of law.

Accordingly, Petitioner reaffirmed his request for a writ of certiorari to issue.

Respectfully submitted,

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Appendix A

XIV Amendment to the U.S. Constitution

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix B

42 USC § 1983
Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, *custom*,[§] or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[§] In use of the word *custom* in the statute, it implies unwritten common law doctrines and discriminatory traditions.